

ORDER NO. 3906

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Amendments to Supplemental Standards of Ethical Conduct      Docket No. RM2017-4  
For Employees of the Postal Regulatory Commission

NOTICE OF PROPOSED RULEMAKING ON  
AMENDMENTS TO SUPPLEMENTAL STANDARDS OF ETHICAL  
CONDUCT FOR EMPLOYEES OF THE POSTAL REGULATORY COMMISSION

(Issued May 19, 2017)

I. INTRODUCTION

The Postal Regulatory Commission (Commission) establishes a rulemaking docket to consider amending the Commission's supplemental standards of ethical conduct, 5 CFR part 5601. The supplemental standards of ethical conduct apply to Commission employees and concern prohibited financial holdings, disqualification when seeking non-federal employment, and engaging in outside employment. The Commission proposes to update the existing supplemental standards to be consistent with 5 CFR part 2635 and the Commission's current regulatory role under the Postal Accountability and Enhancement Act (PAEA), Public Law No. 109-435, 120 Stat. 3198

(2006). This rulemaking also proposes linguistic and organizational revisions to clarify the supplemental standards.

The Office of Government Ethics (OGE) concurs with the Commission's proposed revisions to 5 CFR part 5601.

## II. BACKGROUND

In 1991, Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct.<sup>1</sup> On August 7, 1992, OGE published a final rule titled Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards).<sup>2</sup> The OGE Standards, codified at 5 CFR part 2635, became effective February 3, 1993, and established uniform standards of ethical conduct applicable to all executive branch personnel. In 1993, the Postal Rate Commission collaborated with OGE to draft supplemental standards for inclusion in 5 CFR part 5601. The new 5 CFR part 5601 was published as an interim rule. 58 FR 42839 (Aug. 12, 1993).

In 2006, PAEA changed the name of the agency from the Postal Rate Commission to the Postal Regulatory Commission and made several changes to the Commission's regulatory role. Specifically, PAEA eliminated the former Postal Rate Commission's responsibility to adjudicate omnibus rate cases each year, which set rates for all United States Postal Service (Postal Service) products.<sup>3</sup> Instead, under PAEA the Commission, among other responsibilities, approves or denies discrete Postal Service requests to change rates of market-dominant products or competitive

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<sup>1</sup> See Executive Order No. 12674, 54 FR 15159 (Apr. 12, 1989) (requiring OGE to establish executive-branch Standards of Ethical Conduct); Executive Order No. 12731, 55 FR 42547 (Oct. 17, 1990) (providing for supplementary agency regulations in 5 CFR to be promulgated jointly with OGE for inclusion in 5 CFR).

<sup>2</sup> See 57 FR 35006-35067, as corrected at 57 FR 48557 (Oct. 27, 1992), 57 FR 52583 (Nov. 4, 1992), and 60 FR 66857-66858 (Dec. 27, 1995).

<sup>3</sup> Public Law 109-435, 120 Stat. 3198 §§201-202 (2006) (amending 39 U.S.C. 3621-3622 (2005) and repealing sections 3623-3624).

products.<sup>4</sup> Proposed rate changes include requests to change rates of general applicability, *e.g.*, retail rates available to the public, and rates not of general applicability, *e.g.*, negotiated service agreements (NSAs) with private parties. Post-PAEA, the Commission also must make an Annual Compliance Determination report concerning whether the rates or fees in effect for the year satisfied statutory and regulatory requirements and whether any service standards in effect during the year were not met. 39 U.S.C. 3653(b). These enhanced Commission responsibilities drive the need to modernize the Commission's supplemental standards of ethical conduct.

### III. SUMMARY OF THE PROPOSED REGULATORY CHANGES

The Commission identified a need to revise the existing supplemental standards for several reasons. The supplemental standards of ethical conduct, 5 CFR part 5601, have never been amended or finalized since their 1993 adoption and remain attributed to the Postal Rate Commission.

Therefore, the Commission proposes amendments to accomplish the following goals: (1) reflect the substantial changes to the Commission's regulatory role after the 2006 enactment of PAEA; (2) update its rules to be consistent with 5 CFR part 2635; (3) reflect lessons learned through the Commission's experiences with the existing ethics policies and practices; (4) enhance the clarity of the ethical guidance for its employees; (5) protect the integrity of the Commission's programs and processes; (6) maintain public confidence that Commission employees are fulfilling their duties impartially and objectively; (7) facilitate a well-administered ethics counseling program; and (8) finalize the interim supplemental standards of conduct.

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<sup>4</sup> PAEA introduced the division of Postal Service products into market-dominant products (products delivered under the Postal Service monopoly) and competitive products (all other products). 39 U.S.C. 3621-3622 and 39 CFR part 3010 (regulation of rates for market-dominant products); 39 U.S.C. 3631-3634 and 39 CFR part 3015 (regulation of rates for competitive products).

#### IV. SECTION BY SECTION ANALYSIS OF THE PROPOSED CHANGES TO 5 CFR PART 5601

The rules in 5 CFR part 5601 apply only to Commission personnel.

##### A. Title 5 CFR part 5601

The Commission proposes correcting the title identified in 5 CFR part 5601 by replacing “Postal Rate Commission” with “Postal Regulatory Commission” to reflect the agency’s post-PAEA name.

##### B. Authority Identified in 5 CFR part 5601

The Commission proposes correcting the authority identified in 5 CFR part 5601 by replacing “39 U.S.C. 3603” with “39 U.S.C. 503” to reflect the renumbering of that provision by PAEA.

##### C. Section 5601.101 General

*Section 5601.101(a) Purpose.* The Commission proposes correcting § 5601.101(a) by replacing “Postal Rate Commission” with “Postal Regulatory Commission” to reflect the agency’s post-PAEA name. The Commission also proposes adding cross-references to the executive branch financial disclosure regulations in 5 CFR part 2634, regulations on responsibilities and conduct in 5 CFR part 735, and Commission-specific provisions in 39 CFR part 3000.

*Section 5601.101(b) Definitions.* The Commission proposes deleting the text in existing § 5601.101(b), which defines “affected persons” as used in existing §§ 5601.102 and 5601.104. The Commission proposes retaining aspects of the “affected persons” definition as categories of prohibited sources referenced in the proposed § 5601.102(b), subject to modifications for clarity as well as updates to reflect the Commission’s post-PAEA regulatory role. The Commission’s proposal to move the categories of prohibited sources from § 5601.101 to § 5601.102 is consistent with other federal regulators’ supplemental ethical standards.

The Commission proposes defining eight terms in the revised § 5601.101(b) as follows:

- (1) “securities”—based on a commonly accepted definition.
- (2) “parent”—based on a commonly accepted definition.
- (3) “person”—consistent with 5 CFR 2635.102(k).
- (4) “entity”—indicating its usage to be equivalent to “person.”
- (5) Designated Agency Ethics Official “DAEO”—consistent with § 2638.601 of this title.
- (6) “employment”—moved from the existing § 5601.104(c) and correcting “organizations” from plural to singular form.
- (7) “publicly held corporation”—consistent with a definition used by the Internal Revenue Service. See 26 U.S.C. 162(m)(2).
- (8) “dependent child”—consistent with § 2364.105(d) of this title.

D. Section 5601.102 Prohibited Financial Interests

Section 2635.403(a) of title 5 authorizes agencies, by supplemental regulation, to prohibit or restrict acquiring or holding of a financial interest or a class of financial interests by agency employees based on a determination that acquiring or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which the agency programs are administered. The Commission proposes revising the supplemental regulations to maintain the integrity of the Commission’s programs and processes.

*The deletion of the existing language of § 5601.102.* The existing § 5601.102 prohibits employees from direct or indirect financial interest in “affected persons” as defined by existing § 5601.101(b)’s non-exhaustive list of categories of prohibited financial interest. The Commission proposes restructuring the scope of financial prohibitions to be wholly contained within proposed § 5601.102, providing greater specificity as to the prohibited categories and the meaning of direct versus indirect holdings, and updating the language to reflect that business entities, rather than natural

persons, would most likely pose potential conflicts of interest. The proposed changes improve the regulation's clarity and precision.

*Section 5601.102(a) General prohibition.* To ensure that employees do not engage in (or appear to engage in) actions that may interfere with the objective and impartial execution of their official duties, the Commission proposes prohibiting employees, their spouses, and dependent children from acquiring or holding particular categories of financial interests.

*Section 5601.102(b) Prohibited Securities List.* The Commission proposes to compile a Prohibited Securities List (PSL) cataloguing the financial interests that employees, their spouses, and dependent children may not own. The PSL is intended to serve as a reference source to assist employees in identifying prohibited interests, particularly before purchasing securities. The Commission shall update and disseminate the PSL to Commission employees at least once a year. The proposed PSL will list entities drawn from the six categories listed in proposed 5 C.F.R. § 5601.102(b)(1). A discussion of those six categories follows.

1. Proposed § 5601.102(b)(1)

Proposed § 5601.102(b)(1) will list the six categories based on the Commission's experience under PAEA which may generally cause conflicts of interest for all employees. The proposed PSL will list entities from these six categories. The proposed PSL lists prohibited entities solely based on the Commission's authority to issue supplemental standards. Depending on the employee's role within the Commission, other restrictions on employee's financial holdings, such as 18 U.S.C. 208, 5 CFR part 2635, the Ethics in Government Act, or the Procurement Integrity Act may apply. Employees should consult with the DAEO to confirm that a particular financial interest is not restricted based on rules other than these supplemental standards such as 18 U.S.C. 208, 5 CFR part 2635, the Ethics in Government Act, or the Procurement Integrity Act. See 39 CFR 3000.10.

The Commission proposes to include the following six categories of entities on the PSL:

- a. Entities that participated in Commission proceedings in the last 4 years

Existing §§ 5601.101(b)(1)(i) and 5601.102 prohibit employees from holding a financial interest in companies or persons who have been a party to a Commission proceeding in the past 4 years. The Commission proposes clarifying this prohibition to include any entity participating in a proceeding before the Commission in the last 4 years. This is because the Commission's rules allow entities that are not parties to the proceedings to formally participate in Commission proceedings by expressing their views on the record and seeking relief from the Commission. See, e.g., 39 CFR 3001.20a. Based on the Commission's experiences in its proceedings after the enactment of PAEA, the Commission proposes that the prohibition include complainants, appellants, intervenors, and entities filing comments on the record in Commission proceedings. The prohibition does not include persons whose participation in Commission proceedings is limited to: (1) serving as a witness; (2) serving as a Public Representative; (3) identification, through non-public materials provided to the Commission by the Postal Service according to 39 CFR part 3007, as a mailer entering into a negotiated service agreement (defined at § 3001.5(r) of title 39); or (4) persons merely submitting off-the-record statements or letters to the Commission's Office of Public Affairs and Government Relations. These four proposed exclusions are consistent with the current Commission ethics rules and practices. The particular exclusion of persons submitting off-the-record statements or letters is warranted because the Commission's rules of practice clarify that such statements are not made or considered as part of the Commission's formal record. See 39 CFR 3001.20b. It is also based on the Commission's experience that such off-the-record statements are typically submitted by private citizens not intending to formally participate in the public

proceeding, as opposed to business entities that may pose a financial conflict of interest for Commission employees.

b. Parties to proceedings to which the Commission is also a party

The Commission proposes this additional prohibition to encompass entities seeking some form of relief from or action by the Commission that are involved in cases heard by a tribunal other than the Commission, such as an appeal of a final Commission order in the courts. This prohibition is consistent with the restrictions upon employees of other federal regulators.

c. Competitors of the Postal Service

Existing §§ 5601.101(b)(1)(v) and 5601.102 prohibit employees from holding a financial interest in companies or persons who are primarily engaged in the business of delivering merchandise or written communications. The Commission proposes clarifying the prohibition's language. The Commission does not intend to modify the purpose of the prohibition, which prohibits employees from having a financial interest in competitors of the Postal Service.

d. Certain Postal Service contractors

In conjunction with OGE in 1993, the Commission adopted an interim regulation prohibiting employees from holding financial interests in certain Postal Service contractors. This existing prohibition applies to persons who provide "services or products to the Postal Service that can be expected to produce income that exceeds \$100,000 and equals or exceeds 5 percent of its gross income for the current fiscal year." 5 CFR 5601.101(b)(1)(vi). The Commission proposes moving the existing prohibition to § 5601.102(b)(1)(iv) and clarifying its terms. The Commission proposes to change the term "gross income" to "gross revenue" for two reasons. First, the proposed change reflects that the majority of prohibited sources are business entities rather than



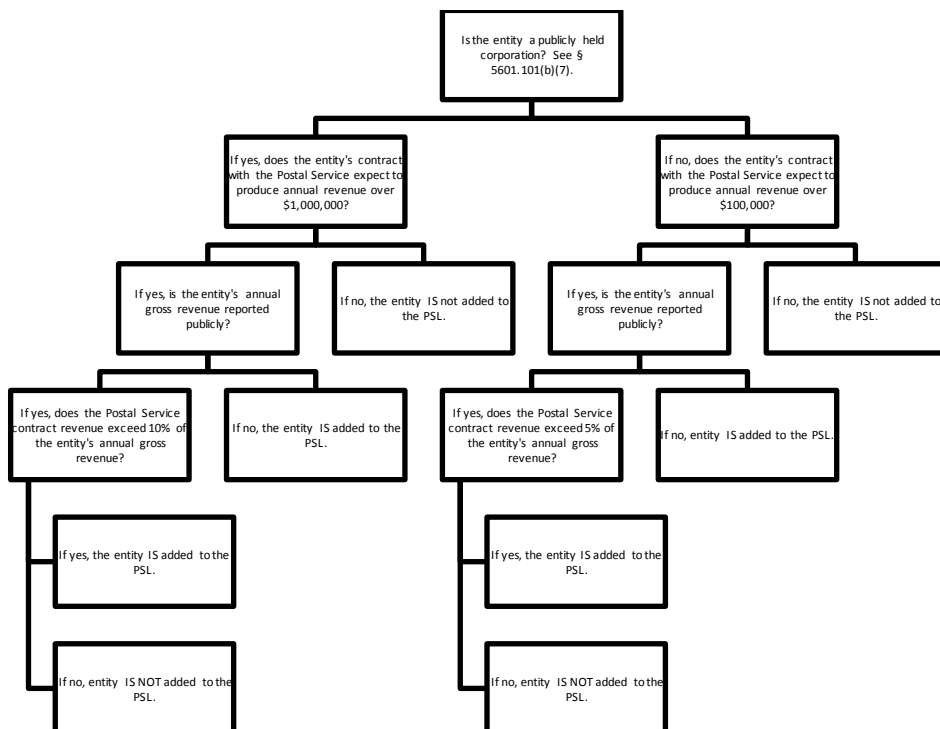
natural persons and, as such, are more likely to report either revenues alone or both revenues and income. Second, because companies report gross income as gross revenues minus operating expenses, gross revenue is the more appropriate measure to analyze conflicts of interest.

The Commission also proposes that different financial thresholds should apply to publicly held corporations versus other entities. This proposed change is based on the Commission's 23 years of experience with the existing rule and aims to better reflect conflicts of interest posed by modern securities after enactment of PAEA. The Commission proposes to retain the dollar amount and percentage thresholds adopted in 1993 for entities other than publicly held corporations that report their gross revenue publicly. Proposed § 5601.102(b)(1)(iv) will prohibit employees from holding interests in such entities with a Postal Service contract producing annual gross revenue that exceeds \$100,000 and 5 percent of the entity's annual gross revenue.

However, recognizing based on experience that most entities that are not publicly held corporations do not report gross income, the Commission proposes to apply the percentage threshold only if information regarding the entity's gross revenue is available publicly. Therefore, the PSL shall include an entity that provides services or products to the Postal Service over \$100,000 if the entity is not a publicly held corporation and does not report its gross revenue publicly. An employee with a financial interest in an entity other than a publicly held corporation that holds a Postal Service contract producing annual gross revenue over \$100,000 may pose an actual or apparent conflict of interest due to multiple factors, including the limited number of owners and a limited public market for trading.

For these reasons, the Commission proposes raising the dollar amount and percentage thresholds adopted in 1993 applicable to publicly held corporations to \$1,000,000 and 10 percent of annual gross revenue. An employee with a financial interest in a publicly held corporation that holds a Postal Service contract producing annual gross revenue over \$1,000,000 and 10 percent is likely to pose a risk of an

actual or apparent conflict of interest. The following decision tree summarizes the proposed § 5601.102(b)(1)(iv):



e. Other entities that may pose an actual or apparent conflict of interest under 5 CFR part 2635

The existing definition of “affected persons” in whom employees may not hold a financial interest provides a non-exhaustive list of categories. Recognizing that certain categories may be imprecise, the Commission proposes revisions to provide greater specificity regarding prohibited interests. Notwithstanding such revisions, the Commission proposes memorializing that the touchstone of all prohibitions on financial holdings stems from the requirements contained in 5 CFR part 2635, which require that employees avoid holding financial interests that may cause or appear to cause any appearance of loss of impartiality in the performance of their official duties. This proposed change will promote consistency between 5 CFR parts 5601 and 2635 and

better safeguard the integrity of the Commission's programs and operations. The proposed change also reflects the Commission's 23 years of experience with the existing rule as well as the Commission's current responsibilities under the PAEA.

To exemplify entities that may cause an apparent or actual conflict of interest, the Commission references entities primarily engaged in the business of sending periodicals or standard mail, which correspond respectively to the aspects of the definition of "affected persons" contained in existing §§ 5601.101(b)(1)(ii) and (iv). Existing §§ 5601.101(b)(1) (ii) and (iv) lack objective criteria limiting the scope of the prohibited interests. The existing prohibitions burden employees and fail to address actual or apparent conflict of interests. Therefore, the Commission proposes incorporating the provisions of §§ 5601.101(b)(1)(ii) and (iv) as examples of the proposed § 5601.102(b)(1)(v) to emphasize that only those users of periodicals and standard mail that pose an apparent or actual conflict of interest should be prohibited interests.

The Commission proposes deleting existing § 5601.101(b)(1)(iii), which defines a company or other person "[w]ho is in the business of selling merchandise, and a substantial portion of whose orders are solicited, received, or delivered through the mails" as an "affected person." Under the existing § 5601.102, employees are prohibited from indirect or direct financial interests in such persons.

The Commission does not propose to specifically incorporate the prohibition of existing § 5601.101(b)(1)(iii) into the revised supplemental regulations because the prohibition is imprecise and burdensome. Drafted before the advent of e-commerce, the existing § 5601.101(b)(1)(iii) contains no threshold or definition of which merchandise sellers would be considered to have a substantial portion of their orders solicited, received, or delivered through the mails. Given that the majority of retailers solicit, receive, or deliver merchandise through the mails with the expansion of e-commerce, the existing § 5601.101(b)(1)(iii) provides minimal guidance to employees and ethics officials as to which companies or persons may pose an apparent or actual conflict of interest. Ultimately, the Commission proposes deleting the existing

§ 5601.101(b)(1)(iii) because such financial holdings pose minimal risk of an apparent or actual conflict of interest.

Also, the enactment of PAEA has transformed the Commission's regulatory role. In 1993, the primary rationale given for adopting the existing § 5601.102 was to prevent disqualification of too many Commission employees during omnibus rate proceedings, which the Commission no longer holds. Thus, the Commission proposes to revise the existing § 5601.102 to reflect the Commission's post-PAEA role. Further, the proposed revised categories of prohibited sources would likely encompass any potential mail order retailers that may exert (or appear to exert) considerable influence upon the mailing industry. For instance, such retailers would likely have participated in Commission proceedings in the last 4 years (as addressed by the proposed § 5601.102(b)(1)(i)).

f. Parent corporations to any of the above categories

The Commission proposes prohibiting its employees from holding financial interests in parent entities of any of the above-listed categories of prohibited holdings. This type of prohibition is consistent with the restrictions on other federal regulators' employees.

2. Proposed 5 CFR 5601.102(b)(2)

To improve structural clarity and consistency, the Commission proposes moving the exclusion in the existing § 5601.101(b)(2) to the proposed § 5601.102(b)(2). Also, the Commission proposes replacing "company or other person" with "entity" and instead referring to the PSL consistent with the other proposed linguistic changes to 5 CFR part 5601.

*Section 5601.102(c) Exception.* The Commission proposes adding § 5601.102(c) to clarify that proposed § 5601.102 does not prohibit employees from holding diversified mutual funds or sector mutual funds that do not concentrate their investments in entities identified in the proposed §§ 5601.102(b)(1)(i)–(vi). This

proposed addition makes the Commission's proposed changes consistent with § 2640.201 of this title.

*Section 5601.102(d) Newly prohibited securities or new employees.* The Commission proposes adding § 5601.102(d) to provide guidance to employees that discover they hold an interest in an entity on the PSL, either when the employee receives the prohibited securities list for the first time (e.g., employees receiving the first publication of the PSL or new employees) or receives an updated version of the PSL adding entities. The Commission proposes requiring such employees to notify the DAEO in writing of prohibited holdings within 30 days of dissemination of the PSL. The Commission proposes requiring such employees to divest the interest or obtain a waiver under proposed § 5601.102(g) within 90 days of dissemination of the PSL.

*Section 5601.102(e) Securities acquired without specific intent.* The Commission proposes adding § 5601.102(e) to guide employees that acquire an interest in a prohibited security without specific intent (e.g., through marriage, inheritance, or gift). The Commission proposes requiring such employees to notify the DAEO in writing within 30 days of the acquisition. The Commission proposes requiring such employees to divest the interest or obtain a waiver within 90 days of acquisition.

*Section 5601.102(f) Divestiture.* 5 CFR part 2635 and the ethics policies of the Commission permit employees to divest themselves of prohibited financial interests under particular circumstances. The Commission proposes adding § 5601.102(f) to set forth a uniform standard and guide for employees regarding how to accomplish divestiture, obtain extensions of time to divest, and accomplish disqualification pending divestiture.

- (1) *Procedure for accomplishing divestiture.* The Commission proposes requiring employees to submit written proof of divestiture to the DAEO. The Commission proposes that the employee shall continue to be recused until the date of the DAEO's written confirmation that divestiture has been accomplished.
- (2) *Extension of period to divest.* Consistent with § 2635.403(d) of this title, the proposed regulation provides 90 days for divestiture, with extension available in cases of undue hardship.

- (3) *Disqualification pending divestiture.* The Commission proposes requiring an employee to disqualify himself or herself (or obtain a waiver under proposed § 5601.102(g)) from participation in any particular matters that may pose a conflict of interest before the employee receives written confirmation of divestiture from the DAEO.

This proposed procedure will help to maintain public confidence and protect the Commission's integrity by ensuring that employees are not working on matters affecting their financial interests.

*Section 5601.102(g) Waivers.* 5 CFR part 2635 and the ethics policies of the Commission permit employees to obtain waivers of disqualification under particular circumstances. The Commission proposes adding § 5601.102(g) to provide greater specificity regarding the requirements to obtain a waiver and to acknowledge that a waiver may be conditional. The Commission proposes that the DAEO shall have authority to grant a written waiver of the application of proposed § 5601.102(a) based on a determination that the waiver is not prohibited by law or inconsistent with § 2635.402(d) of this title and that the particular circumstances do not require that the financial interest be prohibited or divested to avoid an apparent conflict of interest. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the undue burden that the prohibited financial interests section may impose on Commission employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

#### E. Section 5601.103 Notice of Disqualification When Seeking Employment

The existing § 5601.103 requires employees to notify their supervisors of the need to disqualify themselves from proceedings when seeking employment. The Commission proposes dividing § 5601.103 into sections (a) and (b). Proposed § 5601.103(a) requires notice of disqualification when seeking employment to be made

in writing and directed to the DAEO within 3 business days. The Commission also proposes modifying § 5601.103(a) to reflect that supervisors seeking employment must notify the DAEO to ensure that the supervisor is disqualified from working on and supervising matters relating to the supervisor's prospective employer's financial interest. The Commission proposes requiring the DAEO to inform the employee's supervisor of the disqualification. This proposed amended procedure does not replace any notification requirements imposed upon employees required to file public financial disclosure reports (OGE form 278(e)) to comply with the Stop Trading on Congressional Knowledge Act of 2012. See Public Law 112-105, 126 Stat. 291, 303-04, § 17 (2012). Public filers must comply with additional notification requirements set forth in § 2635.607 of this title. Proposed § 5601.103(b) addresses withdrawal of notices of disqualification by employees.

Notification of disqualification to the DAEO facilitates the DAEO's ability to advise employees of potential ethical concerns. Where disqualification is necessary, the Commission proposes requiring a written record to protect both the disqualified employee and the Commission. A written statement maintained by the DAEO avoids possible questions about the scope and terms of the disqualification and ensures that the Commission will be able to provide adequate staffing for the affected matter. To encourage employee candor concerning potential disqualifications and maintain the integrity of the Commission's programs and processes, the DAEO need not inform the employee's supervisor of the reason for the employee's disqualification. The Commission's proposal merely amends the notification procedure when disqualification is otherwise appropriate. The Commission's proposal makes no changes to the standard to determine when disqualification is necessary.

#### F. Section 5601.104 Prohibited Outside Employment

Existing § 5601.104 is titled "Outside employment" and includes discussion of both prohibited outside employment and outside employment that is permitted, subject to prior approval. To differentiate between these two concepts, the Commission

proposes to divide the concepts into two separate rules. Proposed § 5601.104 discusses only prohibited outside employment, which is currently discussed in existing § 5601.104(a). Newly created proposed § 5601.105 discusses prior approval for outside employment, which is currently discussed in existing § 5601.104(b). The Commission proposes moving the existing §§ 5601.104(c) to 5601.101(b)(6) with the other defined terms of 5 CFR part 5601. See *supra* part VI.C.

Accordingly, the Commission proposes retitling § 5601.104 as “Prohibited outside employment.” Also, the Commission proposes replacing the phrase “a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of the Postal Service” with the phrase “an entity on the prohibited securities list described in § 5601.102(b).” This proposed change reflects the replacement of the § 5601.101(b) “affected persons” terminology with the “prohibited securities list” terminology used in the proposed § 5601.102(b).

#### G. Section 5601.105 Prior Approval for Outside Employment

The Commission proposes to create separate § 5601.105 to discuss prior approval for outside employment and subdivides the discussion into sections (a) and (b) as follows.

*Section 5601.105(a) Prior approval for outside employment.* The Commission proposes amendments to make this subsection consistent with the existing text of § 3000.20(b) of title 39 and to enhance clarity. Currently, the DAEO provides employees approved for outside employment (and their supervisor) with a written memorandum counseling the employee regarding potential ethical concerns. See 39 CFR 3000.10(a). Consistent with this current practice, the Commission proposes requiring the DAEO to provide the written notice of approval to the employee’s supervisor. The Commission proposes this modification to ensure that employees do not work on matters that may pose an actual or apparent conflict of interest and thereby maintain the integrity of the Commission’s programs and processes.



*Section 5601.105(b) Scope of approval.* Also, the Commission proposes addressing the scope of approval for outside employment. The Commission proposes requiring employees to submit a new request for approval upon a significant change in the nature or scope of the outside employment or a change in the employee's Commission position or assigned responsibilities. This requirement will enable the DAEO to prevent actual or apparent conflicts of interest that may develop based on changes in circumstances after approval for outside employment has been granted.

#### V. ADMINISTRATIVE ACTIONS

The Commission establishes Docket No. RM2017-4 for consideration of matters raised by this Order. Additional information concerning this rulemaking may be accessed via the Commission's website at <http://www.prc.gov>. Interested persons may submit comments on this Order no later than 30 days after the date of publication of this Order in the *Federal Register*. Pursuant to 39 U.S.C. 505, Samuel M. Poole is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

#### VI. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission establishes Docket No. RM2017-4 for consideration of the matters raised by this Order.
2. Interested persons may submit comments no later than 30 days after the date of publication of this Order in the *Federal Register*.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Samuel M. Poole to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble  
Secretary

By the Office of Government Ethics.

Walter M. Shaub, Jr.  
Director, Office of Government Ethics

## **List of Subjects in 5 CFR Part 5601**

Conflicts of interests.

For the reasons discussed in the preamble, the Commission proposes to amend chapter XLVI of title 5 of the Code of Federal Regulations as follows:

Revise part 5601 to read as follows:

### **Part 5601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE POSTAL REGULATORY COMMISSION**

Sec.

5601.101 General.

5601.102 Prohibited financial interests.

5601.103 Notice of disqualification when seeking employment.

5601.104 Prohibited outside employment.

5601.105 Prior approval for outside employment.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 503; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

**Source:** 58 FR 42840, Aug. 12, 1993, unless otherwise noted.

#### **§ 5601.101 General.**

(a) *Purpose.* In accordance with § 2635.105 of this title, the regulations in this part apply to employees, including Commissioners, of the Postal Regulatory Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in part 2635 of this title. In addition, the executive branch financial disclosure regulations contained in part 2634 of this title,

additional regulations on responsibilities and conduct at part 735 of this title, and Commission-specific provisions contained in 39 CFR part 3000 apply to Commission employees.

(b) *Definitions.* For the purposes of this part:

(1) The term *securities* includes an interest in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in §§ 5601.102 (b)(1)(i)-(b)(1)(v).

(3) The term *person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of

Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(4) The term *entity* means person.

(5) The term *DAEO* means the Designated Agency Ethics Official, or his delegate under § 2638.601 of this title.

(6) The term *employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization unless such activities involve the practice of a profession within the meaning of § 2636.305(b)(1) of this title, including the giving of professional advice, or are for compensation, other than reimbursement of expenses.

(7) The term *publicly held corporation* means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(8) The term *dependent child* means when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(i) Is unmarried, under age 21, and living in the household of the reporting individual; or

(ii) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

**§ 5601.102 Prohibited financial interests.**

(a) *General prohibition.* No employee, and no spouse or dependent child of an employee, shall acquire or hold any securities issued by an entity on the prohibited securities list described in paragraph (b) of this section.

(b) *Prohibited securities list.* At least once a year, the Commission will publish and distribute to employees a list of entities whose securities an employee or the spouse or dependent child of an employee may not own.

(1) The list shall include:

(i) An entity participating in a proceeding before the Commission in the last 4 years, *e.g.*, complainants, appellants, intervenors, and entities filing comments on the record in Commission proceedings;

(ii) A party to a proceeding to which the Commission is a party, *e.g.*, appellate proceedings, administrative proceedings, or civil actions;

(iii) An entity primarily engaged in the business of delivering packages, merchandise, or written communications, *i.e.*, an entity whose primary business competes with the Postal Service;

(iv) An entity providing services or products to the Postal Service that can be expected to produce annual revenue:

(A) to a publicly held corporation exceeding \$1,000,000, *and* if the entity reports its gross revenue publicly, exceeding 10 percent of its annual gross revenue; or

(B) to any other entity exceeding \$100,000, *and* if the entity reports its gross revenue publicly, exceeding 5 percent of the entity's annual gross revenue;

(v) Any other entities not listed above for which a Commission employee holding a security may raise an actual or apparent loss of impartiality affecting the integrity of the Commission's programs and operations, e.g., entities primarily engaged in the business of publishing or distributing publications such as periodicals or sending advertising, promotional, or other material on behalf of itself or another entity through the mails; and

(vi) The parent corporation of any subsidiary described in paragraphs (b)(1)(i)–(b)(1)(v) of this section.

(2) The list shall not include an entity whose use of the mail is merely an incidental or minor factor in the general conduct of its business.

(c) *Exception.* Nothing in this section prohibits an employee, or the spouse or dependent child of an employee, from acquiring or holding an interest in a publicly traded or publicly available mutual fund or other collective investment fund, or in a widely held pension or mutual fund, provided that the fund's prospectus or practice does not indicate the stated objective of concentrating its investments in entities identified in paragraphs (b)(1)(i)–(b)(1)(vi) of this section.

(d) *Newly prohibited securities or new employees.* Within 30 days after the Commission disseminates the prohibited securities list to an employee, an employee who owns, or whose spouse or dependent child owns, prohibited securities shall report that ownership to the DAEO. The employee's report must be in writing and include the

name of the prohibited security and the date of acquisition. Except as provided in paragraph (g) of this section, the employee, or the spouse or dependent child of the employee, shall divest prohibited securities within 90 days after dissemination of the prohibited securities list.

(e) *Securities acquired without specific intent.* Within 30 days after an employee, or the spouse or dependent child of an employee, acquires securities of an entity on the prohibited securities list as a result of marriage, inheritance, gift or otherwise without specific intent to acquire the securities, the employee shall report the acquisition to the DAEO. The employee's report must be in writing and include the name of the prohibited security, the date of acquisition, and the method of acquisition. Except as provided in paragraph (g) of this section, an employee, or the spouse or dependent child of an employee, shall divest prohibited securities within 90 days after the date of acquisition.

(f) *Divestiture.*

(1) *Procedure for accomplishing divestiture.* To alleviate an actual or apparent conflict of interest, an employee divesting prohibited securities shall obtain written confirmation from the DAEO that divestiture has been accomplished. A request for such confirmation shall be submitted in writing with sufficient proof to enable the DAEO to confirm that the employee has divested the prohibited security. The employee shall continue to be recused until the date of the DAEO's written confirmation that divestiture has been accomplished.



(2) *Extension of period to divest.* Upon a showing of undue hardship, the DAEO may extend the 90 day period for divestiture specified in paragraphs (e) through (f) of this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with § 2635.402 of this title, from participation in particular matters which, as a result of continued ownership of the prohibited securities, would affect the financial interests of the employee, or those of the spouse or dependent child of the employee.

(g) *Waivers.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose conditions, such as requiring execution of a written disqualification.

**§ 5601.103 Notice of disqualification when seeking employment.**

(a) An employee who has been assigned to or is supervising work on a particular matter that affects the financial interests of a prospective employer and who is required, in accordance with § 2635.604(a) of this title, to disqualify himself or herself from participation in that matter shall provide written notice of disqualification to the

DAEO within 3 business days. The DAEO shall inform the employee's supervisor that the employee is disqualified from the matter.

(b) An employee may withdraw written notice under paragraph (a) of this section upon determining that disqualification from participation in the matter is no longer required. A withdrawal of disqualification shall be in writing and shall be provided to the DAEO. The DAEO shall inform the employee's supervisor that the employee is no longer disqualified from the matter. Public filers must comply with the notification requirement set forth in § 2635.607 of this title even when not required to disqualify from participation in a particular matter. Employees who file a notification statement in compliance with § 2635.607 of this title are not required to file a separate notice under this section.

#### **§ 5601.104 Prohibited outside employment.**

An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for an entity on the prohibited securities list described in § 5601.102(b)(1)(i)-(b)(1)(vi).

#### **§ 5601.105 Prior approval for outside employment.**

(a) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to give approval based on an informed determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this

section and part 2635 of this title. The DAEO shall provide a copy of any written approvals for outside employment to the employee's supervisor.

(b) *Scope of approval.* An employee must submit a new request for approval upon either a significant change in the nature or scope of the outside employment or a change in the employee's Commission position or assigned responsibilities.